

R82. Alcoholic Beverage Control, Administration.

R82-6. Specific Retail Provisions.

R82-6-101. General Provisions.

Reserved.

R82-6-201. Restaurants -- Grandfathered Bar Structures

(1) Authority. This rule is made pursuant to the general authority described in section 32B-1-102; the authority to make rules regarding full restaurants in sections 32B-6-202 and 32B-6-205; the authority to make rules regarding limited restaurants in sections 32B-6-302 and 32B-6-305; and the authority to make rules regarding for beer only restaurants found in section 32B-6-905.

(2) The purpose of this rule is to define terms for full service, limited, and beer only restaurant licenses as required by Title 32B, Chapter 6.

(3) Definitions.

(a) "Actively engaged in the construction of the restaurant" means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "Remodels the grandfathered bar structure" means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "Remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to subsection 32B-5-303(3), the licensee must first apply for and receive approval from the Department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the Department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

(e) "remodels the grandfathered bar structure or dining area" for purposes of subsection 32B-6-205.3(4)(a)(ii) means that:

(i) the grandfathered bar structure or dining area has been altered or reconfigured to:

(A) extend the length of the existing bar structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons from the dining area.

(f) "remodels the grandfathered bar structure or dining area" does not:

(i) preclude making cosmetic changes or enhancements to the existing bar structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(g) Pursuant to subsection 32B-5-303(3), the licensee must first apply for and receive approval from the Department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage, dispensing, or consumption area must first be reviewed and approved by the Department to determine whether it is:

(i) an acceptable use of an existing bar structure or dining area; or

(ii) a remodel of a "grandfathered bar structure or dining area".

R82-6-202. Restaurants -- Alcoholic Flavorings.

(1) Authority. This rule is made pursuant to the authority described in section 32B-1-102 and the authority to make rules regarding full restaurants in sections 32B-6-202 and 32B-6-205; the express authority to make rules regarding limited restaurants in sections 32B-6-302 and 32B-6-305; and the express authority to make rules regarding for beer only restaurants found in section 32B-6-905.

(2) Purpose. The purpose of this rule is to clarify the use of alcoholic products in food production.

(3) Restaurant licensees may use alcoholic products as in beverages only during the authorized selling hours under the restaurant liquor license.

(4) Alcoholic product flavoring may be used in the preparation of food items at any time if plainly and conspicuously labeled "cooking flavoring."

(5) No licensee employee under the age of 21 years may handle alcoholic product flavorings except when engaged in food preparation.

(6) Nothing in this rule authorizes a finished food product to contain alcohol in excess of 0.5% alcohol by volume, which would render it an alcoholic product subject to Title 32B.

R82-6-301. Reserved.

Reserved.

R82-6-401. Bars -- Bar Licensing.

(1)(a) At the time the Commission grants a bar establishment license the Commission must designate whether the bar establishment qualifies to operate as an equity, fraternal, or bar based on criteria in sections 32B-6-404 and 405.

(b) After any bar establishment license is granted, a bar establishment may request that the Commission approve a change in the bar establishment's classification in writing supported by evidence to establish that the bar establishment qualifies to operate under the new class designation based on the criteria in sections 32B-6-404 and 405.

(c) The Department shall conduct an investigation for the purpose of gathering information and making a recommendation to the Commission as to whether or not the request should be granted. The information shall be forwarded to the Commission to aid in its determination.

(d) If the Commission determines that the bar establishment has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the Commission shall approve the request.

R82-6-402. Bars -- Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202; general licensing procedures and section 32B-6-405 for issuing an equity or fraternal bar establishment licenses, which authorizes the Commission to refuse to issue a license if the bylaws are not reasonable and consistent with the purpose of the type of license.

(2) Purpose. This rule furthers the intent of section 32B-6-407 that equity and fraternal clubs operate in a manner that preserves the concept that they are private and not open to the general public.

(3) Application of Rule.

(a) Each equity and fraternal club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

R82-6-403. Bars -- Minors in Lounge or Bar Areas.

(1) Pursuant to subsection 32B-6-406(5), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of an equity, or fraternal bar establishment. A minor may not be on the premises of a bar license except to the extent allowed under section 32B-6-406.1, and may not be admitted into, use, or be on the premises of any lounge or bar area of a bar license.

(2) "Lounge or bar area" includes:

(a) the bar structure as defined in section 32B-1-102(7);

(b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

R82-6-404. Bars -- Sexually Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to sections 32B-1-501 through 32B-1-506, which prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the Commission and require them to appear or perform only in a tavern or bar and only upon a stage or in a designated area approved by the Commission.

(2) Purpose. This rule establishes guidelines used by the Commission to approve stages and designated performance areas in a tavern or bar where sexually oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity" means a state of dress as defined in section 32B-1-102.

(b) "Sexually-oriented entertainer" has the same meaning as that term is defined in section 32B-1-102.

(4) Application of Rule.

(a) A sexually oriented entertainer may appear or perform seminude only on the premises of a tavern or bar.

(b) A tavern or bar licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of sections 32B-1-502 through 32B-1-506;

(ii) a patron to be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the Commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for Commission approval a floorplan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or bar license from the Commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or bar licensee of the Commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or bar licensee of the Commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the Commission.

(ii) The Commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of subparts (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R82-6-501. Airport Lounge -- Reserved.
Reserved.

R82-6-601. On Premise Banquet -- On-Premise Banquet License Room Service - Mini-Bottle 187 ml Wine Sales.

(1) Purpose. Pursuant to section 32B-2-303, the Department may not purchase or stock spirituous liquor in containers smaller than 200 milliliters, except as otherwise allowed by the Commission. The Commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine as one form of room service sales by on-premise banquet licensees located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to registered guests of sleeping rooms and are not offered to the general public.

(2) Application of Rule.

(a) The Department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from an on-premise banquet licensee. Special orders may be placed with the Department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The on-premise banquet licensee must order in full case lots and all sales are final.

(c) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel or resort, and may not be used for other banquet catering services, kept in a minibar, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the Department to take disciplinary action against the on-premise banquet licensee.

R82-6-602. On Premise Banquet -- Reporting Requirement for Banquet Licensees.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to section 32B-6-605.

(2) Purpose. This rule implements the requirement of section 32B-6-605, which requires the Commission to provide by rule procedures for on-premise banquet licensees or sublicensees to report scheduled banquet events to the Department to allow random inspections of banquets by authorized representatives of the Commission, the Department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) An on-premise banquet licensee and an on-premise banquet sublicense licensed under Title 32B, Chapter 8 and Chapter 8b shall file with the Department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter to be held under a banquet contract as defined in R82-5-101.

(b)(i) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered, submitted by mail, or submitted electronically.

(ii) If the licensee adds an event for a quarter after the licensee has already turned in the report, as described in subpart (3)(b)(i) of this rule, the licensee shall promptly contact the licensee's compliance officer to supplement the report.

(c) Each report shall include the name and specific location of each event and the name of the third-party host of the event.

(d) The Department shall make copies of the reports available to a commissioner, authorized representative of the Department, and any law enforcement officer upon request to be used for the purpose stated in subpart (2) of this rule.

(e) The Department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to sections 63G-2-305 and -309;

(ii) any report filed shall be classified by the Department as protected pursuant to section 63G-2-305; and

(iii) any report filed shall be used by the Department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee or sublicensee to timely file a quarterly report may result in disciplinary action pursuant to sections 32B-3-201 to 32B-3-207, and R82-3-102 and 103.

R82-6-701. On Premise Beer Retailer -- Reserved.
Reserved.

R82-6-801. Reception Center -- Reporting Requirement for Reception Center Licensees.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to section 32B-6-805.

(2) Purpose. This rule implements the requirement of section 32B-6-805, which requires the Commission to provide by rule procedures for reception center licensees to report scheduled events to the Department to allow random inspections of events by authorized representatives of the Commission, the Department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) A reception center licensee licensed under section 32B-6-805 shall file with the Department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter.

(b)(i) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered, submitted by mail, or submitted electronically.

(ii) If the licensee adds an event for a quarter after the licensee has already turned in the report, as described in subpart (3)(b)(i) of this rule, the licensee shall promptly contract the licensee's compliance officer to supplement the report.

(c) Each report shall include the name and specific location of each event and the name of the third-party host of the event.

(d) The Department shall make copies of the reports available to a commissioner, authorized representative of the Department, and any law enforcement officer upon request to be used for the purpose stated in subpart (2) of this rule.

(e) The Department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to sections 63G-2-305 and -309;

(ii) any report filed shall be classified by the Department as protected pursuant to section 63G-2-305; and

(iii) any report filed shall be used by the Department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee or sublicensee to timely file a quarterly report may result in disciplinary action pursuant to sections 32B-3-201 through 32B-3-207, and R82-3-102 and 103.

R82-6-802. Reception Center -- Agreement For Alcoholic Beverage Service and Table Service.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to section 32B-6-805.

(2) Definitions. "Third Party Host" is a party that contracts with the reception center licensee to provide alcoholic beverage service at an event to be held on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(a) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, the reception center licensee may not contract with a third party host to hold an event that is open to the public where an alcoholic product is sold or offered for sale.

(b) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, a third-party host may not collect a cover charge or entry fee for admission to the private event.

(c) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, a third-party host may not receive any proceeds from the sale of alcoholic product from the event.

(d) A Reception Center Licensee may host an event for an immediate family member provided that the event is not an event that is open to the public where an alcoholic product is sold or offered for sale, and the Reception Center Licensee does not collect a cover charge or entry fee to the event.

(3) A wine service may be performed by the server at the patron's table. The wine may be opened and poured by the server.

(4) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table.

(5) A patron's table may be located in waiting, patio, garden and dining areas that are on the premises of the reception center, previously approved by the Department.

R82-6-901. Reserved.

Reserved.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: February 25, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202

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